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Attorneys for Plaintiff
SUN OPTICS, INC.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF DELAWARE

SUN OPTICS, INC., a Utah Corporation,
Plaintiff,

v.

FGX INTERNATIONAL, INC., a Delaware
Corporation,
Defendant.

Civil Action No. 1:07cv137-SLR

DECLARATION OF BRUCE RAILE

Bruce Raile, declarant herein, declares as follows:

1. I am a citizen of the United States, am over the age of 21, and am competent to testify to the matters set forth herein.
2. I am the President, CEO, and co-founder of Sun Optics, Inc., Plaintiff in the above-captioned matter.
3. FGX is expanding its infringement of Sun Optics's patents to compete directly with Sun Optics's patented products in an increasing number of markets. FGX's infringement of

Sun Optics's patents began with its Private Eyes line of products sold in the Optical market. As demonstrated by FGX's and Sun Optics's respective advertisements in the optical trade journal *Vision Monday*, a copy of which is attached hereto as Exhibit A, FGX's infringing Private Eyes products compete directly with Sun Optics's patented products in the Optical market. In fact, FGX is now selling its accused Private Eyes products through at least three of the same distributors to the Optical market that were previously marketing Sun Optics's patented products, namely; Pech Optical, Kasperek Optical, and Central Optical. Now, FGX is expanding its distribution of products that infringe on Sun Optics's patents into the mass merchant and chain drugstore market segments.

4. The total market for reading glasses in the United States is approximately \$590 million a year. Of that \$590 million, the mass merchant and chain drugstore market segments account for approximately \$415 million, or approximately seventy percent (70%) of the total annual U.S. reading glass market. FGX is by far the largest reading glass supplier in America, and is already the primary vendor in more than 50% of the mass merchant and chain drugstore market segments. To further increase its market share, FGX recently bought Magnivision, which was FGX's largest reading glass competitor in America. FGX is now purposefully copying Sun Optics's patented products to block Sun Optics from competing in this market.

5. The barriers to entry into the mass merchant and chain drugstore market segments are already numerous, even without FGX's specific attempts to block Sun Optics's further expansion into this market. First, most mass merchants and chain drugstore retailers (collectively "Retailers") purchase their reading glasses from a limited number of vendors, typically using only one primary vendor. This is because it costs the Retailer time and money to manage each vendor relationship. In other words, the more vendors that a Retailer uses, the more time and money it must spend to manage the various vendor relationships. Second, it is expensive for Retailers to change primary vendors because entire new relationships must be developed, new displays must be built and installed, and new protocols for doing business must

be implemented. Finally, Retailers establish allegiances with their primary reading glass vendors fearing they might actually lose business if they were to switch to a new primary vendor that could not supply their customers' demands. These aspects of the mass merchant and chain drugstore markets are significant barriers for new vendors to gain entry into this market.

6. Because Retailers traditionally purchase from only one primary reading glass vendor, the primary vendors engage in fierce competition to replace each other within a Retailer. To protect their market share, some primary reading glass vendors, including FGX, offer incentives to Retailers to sign long-term "exclusive" vendor contracts. These exclusive contracts typically exclude all other vendors, unless another vendor can provide something unique and different, such as a patented program, that the Retailer cannot purchase from their "exclusive" primary vendor.

7. The existence of long-term "exclusive" contracts and the common practice of Retailers purchasing from one primary reading glass vendor are substantial barriers for any new vendor attempting to break into the mass merchant and chain drugstore market segments. To overcome these barriers, Sun Optics created a specific marketing strategy to develop a niche for a "Secondary Vendor" based on unique, high quality, patent-protected products, not available from other vendors. Rather than take the traditional approach of trying to replace the primary vendor, Sun Optics's marketing strategy created a unique, exclusive secondary program to give the Retailer incremental sales while merchandised right alongside the primary vendor's program.

8. The most critical factor for Sun Optics's marketing strategy to be successful is that its patented program must be available exclusively from Sun Optics. To gain the Retailers' interest, and to justify the Retailers' increased managerial expenses, Sun Optics's secondary program must be unique, new, exciting, and, most importantly, available exclusively from Sun Optics. If Sun Optics's patented products are available from the current primary vendor, there is little or no incentive for the Retailer to give Sun Optics's program a chance. Rather than incurring the additional expense of adding Sun Optics as a secondary vendor, Retailers will

simply buy the new program from their current primary vendor. However, if Sun Optics is the exclusive supplier of its top-selling patented products and displays, then Retailers have an incentive to add Sun Optics's products to their current reading glass program. With this marketing strategy, Sun Optics has begun to overcome some of the existing barriers to entry into the mass merchant and drugstore markets as a secondary reading glass vendor.

9. To this end, Sun Optics spent four years and countless hours inventing and obtaining patent protection on new styles, cases, and displays for reading glasses. For Sun Optics's marketing strategy to work, its reading glasses, cases and displays must be top-selling, organized, convenient, new, fashion forward, eye catching, instantly recognizable as a quality product, and, above all, available only from Sun Optics. Thus, Sun Optics sought and obtained patent protection for the fruits of its inventive efforts in the form of the '427, '180, '739 and other patents.

10. As regards the '739 patent, Sun Optics invented cases and displays that allow the consumer to easily browse numerous reading glasses to identify those that appeal to the particular consumer without removing the glasses from the display. This is done by displaying the glasses in cases and on displays that allow the consumer to view at least a portion of the reading glasses without removing them from the display. The displays are also configured such that they tend to remain neat and organized because the reading glasses can easily be removed from and returned to openings in the displays. Sun Optics markets these new innovative display systems as the "Clear Tube" or "Clear Case" reading glass programs because the displays and cases are designed to allow the consumer to see a portion of the reading glasses through the "clear" portion of the cases without having to remove the cases from the display. These patented displays have been the primary tool that has enabled Sun Optics to overcome the significant barriers to entry into the mass merchant and chain drugstore market segments for reading glasses.

18. FGX's infringing Clear Case displays are likely causing price erosion to Sun Optics's patented Clear Case displays. Retailers are very competitive and resistant to price changes from vendors. Thus, Retailers will resist paying higher prices for Sun Optics's patented Clear Case program if they first become accustomed to paying lower prices for FGX's infringing Clear Case program.

19. FGX is making good on the threat of Jack Flynn by destroying Sun Optics's exclusivity on its patented Clear Case program. The best opportunity to market a product is when it is new because it generates interest and excitement. A product is only new once. The Clear Case program is new and exciting now, and now is the best opportunity for Sun Optics to use that newness to expand its presence in the mass merchant and national chain drugstore market segments. However, FGX is effectively preventing its Retailer's from considering Sun Optics's patented products now, while it is new and exciting. Further, by damaging the reputation of the Clear Case concept, FGX's infringing conduct is also curtailing the likelihood that its Retailers will ever consider Sun Optics's patented products in the future. Thus, FGX's infringement is blocking Sun Optics from further expanding into the mass merchant and chain drugstore market segments, even as a secondary vendor.

I have read the foregoing declaration and declare under penalties of perjury that the contents thereof are true and correct of my own personal knowledge.

Dated this 25 day of October, 2007.



BRUCE RAILE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SUN OPTICS, INC., a Utah Corporation,

Plaintiff,

v.

FGX INTERNATIONAL, INC., a Delaware
Corporation,

Defendant.

Civil Action No. 1:07cv137 SLR

CERTIFICATE OF SERVICE

I, R. Eric Hutz, hereby certify that on October 26, 2007 I caused to be electronically filed a true and correct copy of the foregoing with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record.

Donald J. Detweiler, Esquire (I.D. 3087)
Sandra G. M. Selzer, Esquire (I.D. 4283)
GREENBERG TRAUIG, LLP
The Nemours Building
1007 North Orange Street
Suite 1200
Wilmington, DE 19801
Attorneys for defendant
FGX International, Inc.

I further certify that on October 26, 2007, I caused a copy of the foregoing to be served by hand delivery on the above-listed counsel of record.

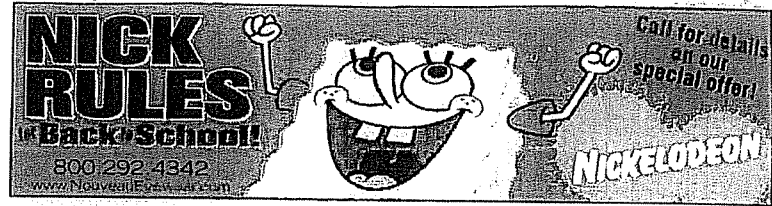
/s/ R. Eric Hutz
R. Eric Hutz (#2702)

EXHIBIT A

VISION MONDAY
1987 - 2007

After finding buyers
for ClearLab Unit,
1-800 Contacts agrees to
merger.

page 14



VisionMonday

www.visionmonday.com JUNE 18, 2007 VOL. 21 NO. 7 \$15

The Newsmagazine for the Eye Care Industry

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Promoting 'Wellness' Eyecare's Next Big Challenge

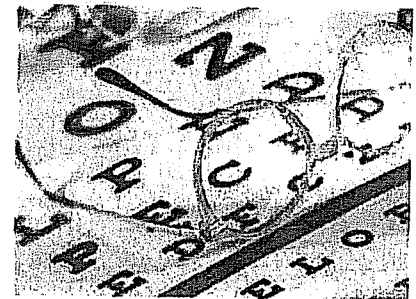


The aging of the population, trends in managed health care and new eye health and vision care product technologies are bringing vision care to the forefront in the minds of patients, doctors and legislators. Combined with the prognosis for a higher number of of sight-endangering conditions, the climate is changing, with an opportunity for eyecare to take its place within the "wellness" framework of health care, a concept which is building momentum.

See page 32.

ANNIVERSARY REPORT

20 Years of Change



VM looks at the
changing business landscape for
ECPs and retailers

page 41

NEWS ANALYSIS

Industry copes with another solutions recall

Companies and ECPs discuss options
with patients, some see boon for
daily disposable CLs.

page 8

NEWS

• B&L signs \$4.5B merger
pact with Warburg Pincus but
may get other suitors. page 10

• Int'l Vision Expo show
management sets '08 dates;
releases audited attendance
for Expo East. page 16

• Emerging Vision to acquire
The Optical Group. page 18



Created to be unforgettable

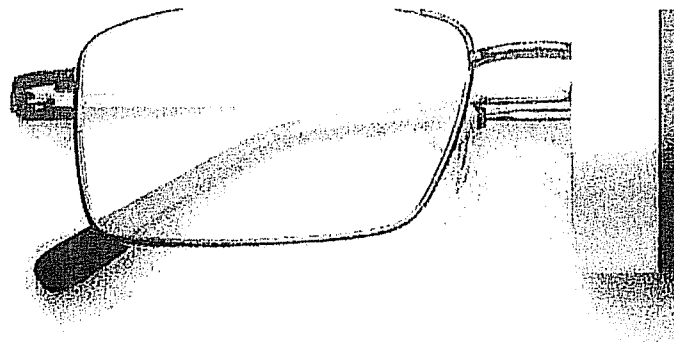
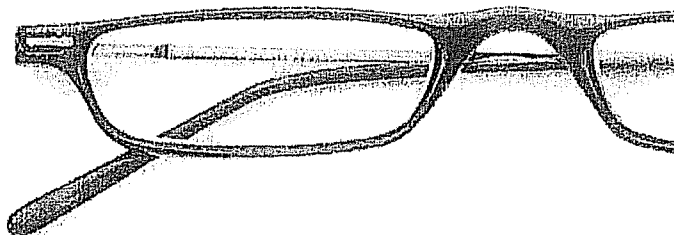
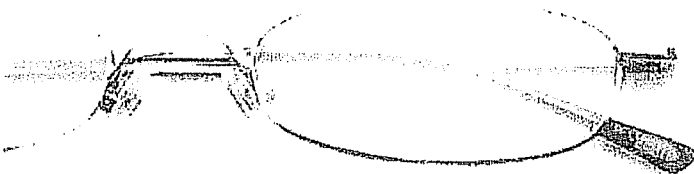
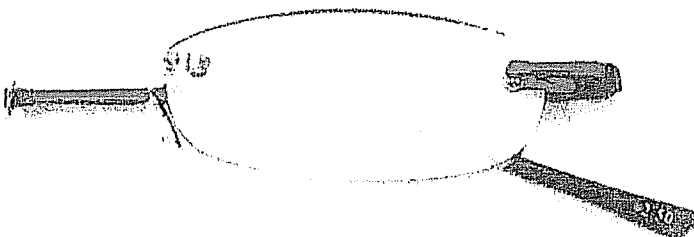
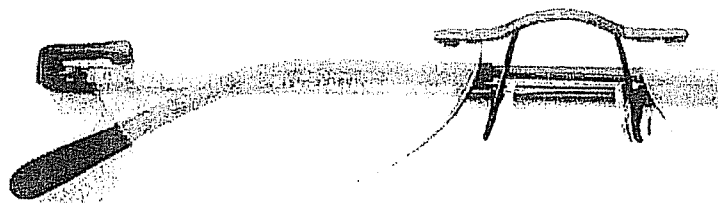
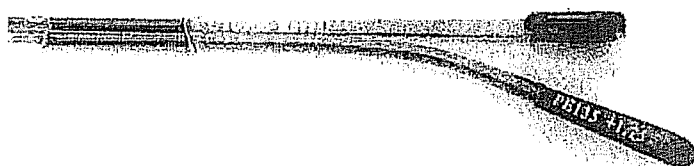
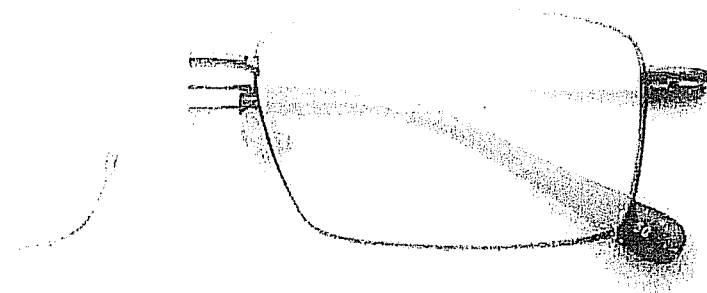
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LAUNCHES

Optima Launches 'Color Free' AR Treatment

STRATFORD, Conn.—Optima is introducing Color Free, a new AR treatment that eliminates the residual color casts typical of many AR lenses.

"AR color casts not only have a deleterious affect on lens cosmetics, they also reduce the transmission of light and provide less than optimum visual acuity," said Nicholas Niejelow, president and CEO of Optima. "Crucial to

compared to 98.2 percent transmission for most other AR lenses. The company noted that each tenth of a percent represents significant visual improvement to the eyeglass lens wearer. The wearer gains cosmetic advantages and benefits from "improved night vision, true color fidelity, better contrast sensitivity, reduced glare from back surface reflections, improved eye contact for better



"With Color Free AR, Optima has created a lens so clear it appears virtually invisible, to the wearer and the viewer."

—Nicholas Niejelow
president and CEO of Optima

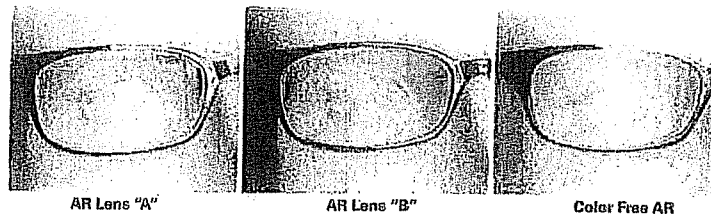
improving light transmission through an AR lens was to eliminate light-absorbing color casts. We accomplished this by using a totally new patented process for our AR lens treatment that does exactly that, and is totally devoid of color. With Color Free AR, Optima has created a lens so clear it appears virtually invisible to the wearer and the viewer."

According to Optima, Color Free AR allows 98.7 percent of light transmission

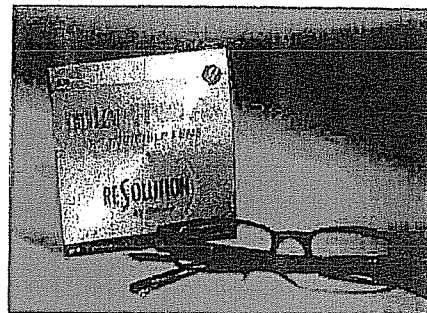
communication and reduced eye strain in work settings."

Color Free AR also features Optima's new flash process, CFT (Cryogenically Flash Treated), which is applied post-hydrophobic-oleophobic to provide a tighter molecular bond. The process makes the treatment more durable and repellent to exterior effects, according to Optima.

"Our proprietary CFT patent-pend-



ing process fills in the microscopic hills and valleys that make up the hydrophobic coating layer to create an ultra-smooth surface with the highest level of surface dirt and smudge resistance," said Niejelow. "With it, we achieve a hydrophobic coating that is one of the highest-rated, with a water contact rating of 123." After hydrophobic coating and CFT, the Bayer rating is 9.1, he added. The wearer benefits from lenses that stay clean longer and are effortless to maintain, with no "cleaning haze," cracking or crazing. Further performance enhancements include a hard coating that utilizes a thermally cured dip coating process which enhances durability and matches the coating and substrate to eliminate birefringence.



Color Free AR is exclusively available in Optima's Resolution polycarbonate lenses, which are made using Optima's exclusive birefringence-free manufacturing process and an aspheric, atoric lens design that enhances optical precision. The lenses can be ordered through wholesale labs and distributors nationwide. ■

SECOND LOOK

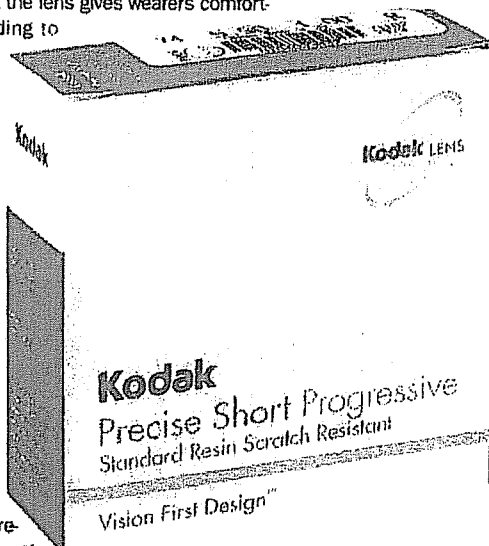
Signet Releases Kodak Precise Short

SAN MARCOS, Calif.—This month, Signet Armorlite is introducing the Kodak Precise Short progressive lens. Designed for small, fashionable frames, the lens gives wearers comfortable viewing and easy adaptation, according to Signet.

Kodak Precise Short has a fitting height of 13mm to 19mm. It is available in 1.67 High Index, InstaShades PolyClear (gray and brown), PolyClear and standard resin.

Kodak Precise Short continues Signet's use of Vision First Design. This technology allows patients to experience a smooth gradation of power, gentle binocular balance, broad field of view, and quick object recognition. Signet said. Direct Digital Surfacing ensures prescription accuracy is delivered from the designer's specs directly into the mold. With the combination of Vision First Design and Direct Digital Surfacing, Kodak Precise Short provides a visual experience comparable to a single vision lens, according to Signet.

All Kodak progressives, including Kodak Precise Short, are eligible for PracticePlus, Signet's ongoing support program designed to enhance the practice of independent eyecare professionals. Members receive funding, staff training, marketing expertise and technical assistance to ensure customer satisfaction and to promote a strong practice. ■



SECOND LOOK

CZV Offers AO Easy in 1.67 Materials

SAN DIEGO—Carl Zeiss Vision (CZV) has released its AO Easy progressive lenses in 1.67 and 1.67 Transitions Gray high-index materials.

"AO Easy is now available in a comprehensive range of materials," said Steve Mitrakos, CZV's vice president of marketing. "This will be a significant benefit to the many eyecare professionals who use AO Easy as their primary progressive lens."

In addition to 1.67 and 1.67 Transitions lenses, AO Easy is available in polycarbonate and polycarbonate Transitions Gray, and hard resin and hard resin Transitions Gray and Brown and 1.6 clear. AO Easy is also available as AO Easy HD, which uses free-form manufacturing technology to customize the lens for the individual's total prescription. AO Easy HD is available in 1.67 and 1.67 Transitions Gray.

"Eyecare professionals appreciate AO Easy's combination of large central viewing areas and exceptionally low distortion and swim in the periphery," Mitrakos said. "They also appreciate the fact that AO Easy helps them increase their profitability with managed care patients through SOLA eRewards. Eyecare professionals who participate can earn \$15 for every pair of AO Easy Lenses they order." ■

SECOND LOOK

Essilor Releases Varilux Eclipse 360°

DALLAS—Essilor of America (EOA) has released the Varilux Ellipse 360°, its latest, digitally-surfaced progressive lens.

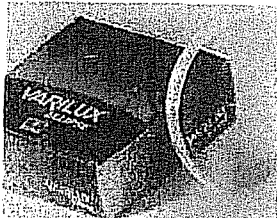
"Varilux Ellipse is designed specifically for small frames and by combining with 360° Digital Surfacing, we are combining an award-winning short corridor design with the latest digital surfacing process," said Kim Schuy, Varilux brand manager. "This new product offers wider fields of vision, less distortion and improved acuity than other short corridor designs."

According to Essilor, the front-side design of a Varilux Ellipse 360° lens is now aligned with the back of the lens using proprietary software, known as Point-By-Point Prescription Mapping, to create an optimized back-side design. This optimized back-side design is then applied with 360° Digital Surfacing, a patented manufacturing process.

360° Digital Surfacing maintains the integrity of the Varilux Ellipse lens design, which offers a wide viewing area, with 85 percent of power achieved at only 9.5mm. Varilux Ellipse lenses offer superior distance vision with a full 140° field of vision. The lenses are designed specifically for presbyopes wanting smaller, stylish frames that require a fitting height as low as 14 mm.

Varilux Ellipse 360° lenses are systematically available with Crizal, Crizal Alizé or Crizal Alizé with Clear Guard.

Also, Essilor is expanding its traditional Varilux Ellipse lens line, which is now available in Thin & Lite 1.60 in both clear and Transitions V in gray.



SECOND LOOK

McGee Introduces Kasey Kahne Prescription Eyewear Cross Licensed With NASCAR

MARIETTA, Ga.—The McGee Group presents the Kasey Kahne Prescription Eyewear Fast Track Collection cross-licensed with NASCAR.

The Fast Track Collection offers two race inspired styles. The KK 09, the stainless steel KK 09 and

the acetate KK 11. Both feature aerodynamic temple designs and the Kasey Kahne signature number 9 on the temple tips. Each style is available in two colors, gunmetal and brown for the KK 09 and black and tortoise for the KK 11, and includes a Kasey Kahne case.

Purchase the two style/four frame Fast Track Collection and receive a Kasey Kahne counter card as a POP plus a Kasey Kahne Reserved Parking sign as a gift. Each frame in the Kasey Kahne Prescription Eyewear Fast Track Collection cross-licensed with NASCAR is priced to the dispenser at \$42.95.



The KK 09.

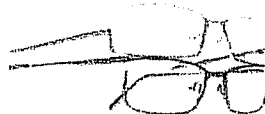


The KK 11.

SECOND LOOK

Artoptic Adds Modern Beat to Uptempo

NEW YORK—Artoptic International is launching a contemporary line of eyewear.



Sleek shapes and open temple designs are part of the new Uptempo from Artoptic Int'l.

Four new styles in the Italian-designed line feature contemporary fashion colors and a youthful, clean look. Some feature open-detailed design temples and endpieces, others feature popular semi-rimless looks and rectangular shapes.

The line's philosophy is "Contemporary Eyewear for the Rhythm of Life," geared to the younger trend, eyewear customer. Uptempo is priced to the dispenser at \$54.95.

SECOND LOOK

OGI Presents New Styles in Three Collections

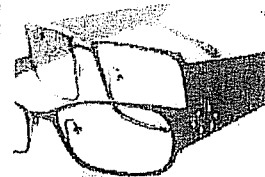
MINNEAPOLIS—OGI introduces new styles in their Compression Mount Rimless, Titanium and Prime Metal collections.

In Compression Mount Rimless, OGI adds five models for individuals seeking lightweight styles with a sophisticated look. These combination frames feature metal fronts and plastic two-toned temples in a variety of colors with adjustable nose pads.

Ten new frames have been added to OGI's Titanium Collection for high-quality, tailored frames with unique styling. Playful elements such as rivets, die cuts, engravings and painted patterns give these new additions an innovative feel. They also feature intense color combinations and popular shapes.

OGI has introduced five new Prime Metal frames for customers who desire great design loaded with personality. These models are made of premium materials for the highest product quality.

These new additions to OGI's collections are priced to the dispenser between \$75 and \$125.



Models 5029 and 5030 from OGI's Titanium Collection.

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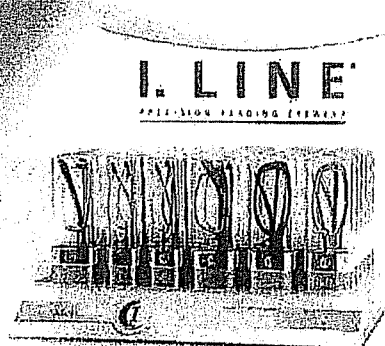
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PATENT NO. 7,111,104; 7,335,811

EXHIBIT B



